

No. 392.

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

MUTUAL RESERVE FUND LIFE ASSO-
CIATION, A Corporation,

Plaintiff in Error,

vs.

. K. DU BOIS, as Administrator of the
Estate of Edward J. Curtis, Deceased,

Defendant in Error.

TRANSCRIPT OF RECORD.

Writ of Error to the Circuit Court of the United States,
for the District of Idaho, Central Division.

FILED
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United States Circuit Court of Appeals for the Ninth Circuit.

MUTUAL RESERVE FUND LIFE
ASSOCIATION, a Corporation,

Plaintiff in Error,

vs.

J. K. DUBOIS, as Administrator of
the Estate of EDWARD JAY CUR-
TIS, deceased.

Defendant in Error.

**Order Extending Time to Docket Cause and File
Transcript, etc.**

For good cause shown it is hereby ordered, that the time to docket cause, and file the record in the above entitled cause in said court of appeals is hereby extended to and including the fifth day of August, 1897.

Dated July 16th, 1897.

JAS. H. BEATTY,

Judge.

[Endorsed]: Order Extending Time to Docket Cause and File Transcript, etc. Filed July 20th, 1897. Frank D. Monckton, Clerk. By Meredith Sawyer, Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

MUTUAL RESERVE FUND LIFE
ASSOCIATION, a Corporation,

Plaintiff in Error,

vs.

J. K. DUBOIS, As Administrator of
the Estate of EDWARD JAY CUR-
TIS, deceased.

Defendant in Error.

**Statement of the Errors on which Plaintiff In-
tends to Rely and Designating the Parts of
the Record Necessary for the Consideration
Thereof.**

To the Defendant in Error, and Messrs. Alfred A. Fraser,
and Geo. H. Stewart, his Attorneys.

You and each of you will please take notice, that the
Plaintiff in Error, herewith presents and files with the
Clerk of this Court, a statement of the errors on which it
the said Plaintiff in Error intends to rely, namely:

I.

That the Circuit Court of the United States, for the Cen-
tral Division of the State of Idaho, erred in deciding, that

the Laws of the State of New York of 1876, as Amended in 1877, and under which it held that the Notice given the deceased of the levying of the Assessment or Mortuary Call No. 68, was not given in time, applied to the Plaintiff in Error, above-named.

II.

That said Court erred in deciding, that the said Laws of the State of New York of 1876, as Amended in 1877, applied to insurance companies which like the Plaintiff in Error do business and operate upon the assessment plan.

III.

The said Court erred in deciding, that the Plaintiff in Error was required to give the deceased, or any of its members thirty days notice of the falling due of an Assessment or Mortuary Call.

IV.

The said Court erred, in not applying the Laws of the State of New York, chapter 175, Laws of 1883, to the Plaintiff in Error, and in not holding that the said Plaintiff in Error was subject only to the provisions of the said Laws.

V.

The said Court erred in not applying the decision of the New York Court of Appeals, in the case of *Ronald v. Mu-*

tual Reserve Fund Life Association, 132 N. Y. 378, to the Plaintiff in Error, and in not holding that the Plaintiff in Error was subject only to the provisions of the laws of the State of New York, chapter 175, Laws of 1883.

VI.

The said Court erred in deciding that the Notice of the Assessment or Mortuary Call, No. 68, dated and mailed by the Plaintiff in Error on June 1st, 1893, and calling for the payment by the said deceased of the said Assessment or Mortuary Call on or before July 1st, 1893, was not given or served as required by the said Laws of the State of New York of 1876, as Amended in 1877, if the said Laws did apply to the Plaintiff in Error.

VII.

The said Court erred, in not construing the Policy of Insurance in this case, according to the Laws of the State of New York applicable thereto.

VIII.

The said Court erred, in deciding that the said Notice of Assessment or Mortuary Call, No. 68, dated and mailed to the said deceased, by the Plaintiff in Error on June 1st, 1893, was not duly given or served.

IX.

The said Court erred, in deciding that the Assessment or Mortuary Call, No. 68, dated and mailed by the Plaintiff in Error on June 1st, 1893, was due July 1st, 1893.

X.

The said Court erred in deciding, that the failure by the said deceased to pay the Assessment or Mortuary Call No. 68, did not operate as a forfeiture of the policy of insurance in this case, and that notwithstanding such failure and default, that said policy of insurance remained in full force and effect.

XI.

The said Court erred, in ordering judgment for the defendant in error herein.

XII.

The said Court erred, in not ordering judgment for the Plaintiff in Error, Mutual Reserve Fund Life Association.

And you and each of you will take further notice, that the following papers, parts and portions of the transcript of the record and proceedings in this case are hereby distinctly designated, and which the said Plaintiff in Error

thinks necessary for the consideration thereof, and material to the case, to-wit:

First:—The Complaint in the case, as the same is stated and set forth on pages 1 to 13 of said record, both of said pages inclusive.

Second:—The Answer to the said Complaint, as the same is stated and set forth on pages 22 to 32 of said record, both of said pages inclusive, and with the exhibits thereto attached, and made part thereof.

Third:—The Stipulation, or Statement of Facts in said case, as the same is stated and set forth on pages 33 to 36 of said record, both pages inclusive.

Fourth:—The Affidavit of Bennett W. T. Amsden, as the same is stated and set forth on pages 37 to 51 of said record, both pages inclusive, and with the exhibits thereto attached, and made part thereof, saving and excepting the following exhibits appearing therein, which are hereby urged and requested to be eliminated therefrom, and should not be printed, namely:—"Mortuary Call No. 68, issued June 1, 1893, Part 2," the same being a portion of Exhibit A, of said affidavit on page 41 of said record, for the reason, and upon the ground, that the said paper is wholly immaterial to the case, and irrelevant to the issues involved therein.

Fifth:—The Judgment, as the same is stated and set forth on page 52 of said record.

Sixth:—The Opinion or Decision of the Court, as the same is stated and set forth on pages 53a to 53f of said record, both pages inclusive.

Seventh:—The Defendant's Bill of Exceptions, as the same is stated and set forth on pages 57 to 104 of said record, both pages inclusive, saving and excepting the following exhibits appearing therein, which are hereby urged and requested to be eliminated therefrom, and should not be printed, the same, and each of them already appearing in and made part of the said record, and being a repetition thereof, namely:—

a: The Stipulation, as the same is stated and set forth on pages 57 to 60, of said record, both pages inclusive, and in lieu thereof, insert the following words in the printed Transcript, namely:—"Here follows a copy of said agreed statement, and the same already appearing in this Transcript, and herein fully stated and set forth, is, for that reason not again herein inserted."

b: The Statement of Bennett W. T. Amsden, as the same is stated and set forth on pages 61 to 94, of said record both pages inclusive, together with all the Exhibits thereto attached, and therein mentioned and stated, and in lieu thereof, insert the following words in the printed Transcript, namely:—"Here follows a copy of said Statement of Bennett W. T. Amsden, together with the Exhibits thereto attached, and therein mentioned and stated, and the same already appearing in this Transcript,

and herein fully stated and set forth, is, for that reason not again herein inserted.”

c: The Policy of Insurance, as the same is attached to, and marked Page 95 of said record, and in lieu thereof insert the following words in the printed Transcript, namely:—“Here follows a copy of the Policy of Insurance in this case, offered and admitted in evidence on the trial thereof, as one of Defendant’s Exhibits therein, and a copy thereof being attached to, and made a part of the Complaint herein, and already appearing in this Transcript, is, for that reason not again herein inserted.”

d: The Decision, as the same is stated and set forth on pages 97 to 102 of said record, both pages inclusive, and in lieu thereof, insert the following words in the printed Transcript, namely:—“Here follows a copy of the said Decision, and the same already appearing in this Transcript and herein fully set forth and stated, is for that reason not again herein inserted.”

Eighth:—The Petition for Writ of Error, and Order of Court allowing the same, as the same is stated and set forth on pages 105 and 106 of said record.

Ninth:—The Assignment of Errors, as the same is stated and set forth on pages 107 to 109 of said record, both pages inclusive.

Tenth:—The Order of Court fixing the amount of security which the defendant should give and furnish upon

said Writ of Error, and suspending and staying all further proceedings etc., as the same is stated and set forth on pages 110 and 111 of said record.

Eleventh:—In lieu of the Supersedeas Bond stated and set forth on pages 112 to 118 of said record, both pages inclusive, insert the following words, in the printed Transcript, namely:—“A Supersedeas Bond in the sum of \$6,570.70, as required and ordered to be given and furnished by the defendant upon said Writ of Error, was on the 21st day of June, 1897 duly and regularly given, furnished, and filed with the Clerk of the Court, pursuant to and in compliance with the said Order; that by written stipulation and agreement indorsed thereon, the Attorney for Plaintiff and Defendant in Error, accepted the said Bond, and waived all objections thereto, as to its form and sufficiency; that thereupon, the said Bond was duly approved by the Judge of the Court as to form and also as to sufficiency of surety.”

Twelfth:—The Citation, and indorsements thereon, as the same are stated and set forth on page 119 of said record.

Thirteenth:—The Writ of Error, and indorsements thereon, as the same are stated and set forth on page 120 of said record.

Fourteenth:—Certificate of A. L. Richardson, Clerk, as the same is stated and set forth on page 121 of said record. No other or further part or portion of the said rec-

ord need be inserted or printed in the Transcript, but reference to the original record as filed can be made at any time.

Dated August 3rd, 1897.

Respectfully,

HAWLEY & PUCKETT.

Attorneys for Plaintiff in Error.

I. B. L. BRANDT,

Of Counsel for Plaintiff in Error.

[Endorsed]: Filed Aug. 3rd, 1897. F. D. Monckton,
Clerk.

*In the District Court of the Third Judicial District of the
State of Idaho, in and for Ada County.*

J. K. DUBOIS, As Administrator of
the Estate of EDWARD JAY CUR-
TIS, deceased.

Plaintiff,

vs.

MUTUAL RESERVE FUND LIFE
ASSOCIATION,

Defendant.

Complaint.

The plaintiff complains and alleges:

1st.

That the defendant is now, and at all times herein after named was a corporation duly organized and existing under and by virtue of the laws of the state of New York, and engaged in the business of writing life insurance and making contracts insuring the life of its patrons in the State of Idaho.

2nd.

That on the 17th day of July, 1889, the defendant, in consideration of certain bi-monthly payments, and the payment to them of an admission fee of \$28.00 which said sum was paid to said defendant July 10th, 1889, and an annual payment of the sum of \$18.00 by the said Edward Jay Curtis to it, made their policy of insurance in writing, a copy of which is hereto annexed and marked "Exhibit A" and made a part of this complaint, and thereby insured the life of the said Edward Jay Curtis in the sum of six thousand (\$6000) dollars.

3rd

That on the 29th day of December, 1895, at Boise City, Ada County and State of Idaho, the said Edward Jay Curtis died.

That the said Edward Jay Curtis died, without leaving a last will or testament.

That thereafter, on the 15th day of January, 1896, a petition for letters of administration on the estate of the

said Edward Jay Curtis was filed for record in the Probate Court of the County of Ada, State of Idaho.

4th.

That thereafter such proceedings were had in said Probate Court.

That on the 27th day of January, 1896, by an order duly entered and made in said Court and upon said petition, J. K. Dubois was appointed as Administrator of the estate of the said Edward Jay Curtis, deceased.

That thereafter, the said J. K. Dubois duly qualified as such Administrator, by giving a bond as required by Law, and taking the oath of office, and entered upon the discharge of his duties as said Administrator, and ever since and still is such Administrator, and acting as such.

5th.

That the death of the said Edward Jay Curtis was not caused by his own hand, or by the effect of engaging in any duel, or any violation of any Law, or at the hands of justice.

6th.

That the said Edward Jay Curtis did not enter any naval service whatever, or any military service, company, or regiment, when in actual service, or otherwise during his lifetime, or since the issuing to him of said Policy of Insurance.

7th .

That the said Edward Jay Curtis, and the plaintiff, each, duly performed all the conditions of said Policy of Insurance on their part to be performed.

8th.

That on or about February 4th, 1896, this plaintiff informed said defendant, Mutual Reserve Fund Life Association, of the death of the said Edward Jay Curtis, and thereupon the said defendant denied all liability whatsoever on or under said contract of Insurance and declared that said Policy had lapsed for non-payment of assessment and was forfeited and was absolutely null and void and of no force and effect whatsoever, and refused to pay the same or any part thereof.

9th.

That the defendant has not paid the said six thousand (\$6000) dollars as provided for in said policy of insurance nor any part thereof, and the said sum of six thousand (\$6,000) is now due thereon from the defendant to the plaintiff as such administrator.

Wherefore, Plaintiff demands judgment against this defendant for the sum of six thousand (\$6000) dollars,

and interest thereon at the rate of ten (10) per cent per annum from February 10th, 1896, and for such other and further relief as may be just and equitable.

GEO. H. STEWART,

ALFRED A. FRASER,

Attorneys for Plaintiff.

“Exhibit A.”

No restriction as to travel or residence.

If this certificate or policy of insurance, shall have been in continuous force until five years from its date, it shall thereafter be incontestable for any cause, except non-payment of dues or mortuary premiums at the times and in the manner herein stipulated provided the age of the member is correctly stated in the application therefor .

“MUTUAL RESERVE FUND LIFE ASSOCIATION.”

Number 86796

Annual Dues, \$18.00

Home Office: Potter Building, 36 Park Row, New York,

U. S. A.

In consideration of the application for this certificate of membership, or policy of insurance, which is hereby referred to and made a part of this contract, and of each of the statements made therein, which, whether written by his own hand or not, every person accepting or acquiring any interest in this contract hereby adopts as his own, admits to be material and warrants to be full and true,

and to be the only statements upon which this contract is made, and of the admission fee paid, the "The Mutual Reserve Fund Life Association," does hereby receive Edward Jay Curtis, of Boise City, County of Ada, Territory of Idaho, as a member of said association; and upon the consideration aforesaid, and upon the further consideration, and upon the condition of the payment of the dues for expenses to be paid on or before the seventeenth day of July in every year during the continuance of this certificate, or policy of insurance, and also upon the further condition of the payment of all mortuary premiums, payable at the Home Office of the Association in the City of New York, or to be an authorized Collector, within thirty days from the first week day of the months of February, April, June, August, October, and December of each and every year during the continuance of this Certificate, or Policy of Insurance, and subject to all the provisions, requirements and benefits stated on the second page of this Certificate, or Policy of Insurance, which are hereby referred to, and made a part of this Contract, there shall be payable to the legal representatives of said member, the sum of Six Thousand Dollars, within ninety days after acceptance of satisfactory evidence to the Association of the death of the said member.

Benefits under this certificate, or policy of insurance, shall not be impaired or restricted by travel or change of residence, and if this certificate, or policy of insurance, shall have been in continuous force until five years from its date, it shall thereafter be incontestable for any cause,

except nonpayment of dues or mortuary premium at the time and in the manner herein stipulated provided the age of the member is correctly stated in the application therefor. There shall be no restriction as to change of occupation, except that the member shall not enter any military or naval service whatsoever (the militia when not in actual service, excepted) without the consent of the Association, given in writing by the president or secretary thereof.

In Witness whereof the said "Mutual Reserve Fund Life Association" has caused its corporate seal to be hereunto affixed, and these presents to be signed by its president, or vice-president, and secretary, or assistant secretary, at the City of New York, this 17th day of July, one thousand eight hundred and eighty-nine.

[Seal]

(Signed) E. B. HARPER,

President.

J. M. Stevenson,
Asst. Secretary.

PROVISIONS, REQUIREMENTS AND BENEFITS.

I.

Within thirty days from the first week day of the months of February, April, June, August, October and December of each and every year during the continuance of this Certificate, or Policy of insurance, there shall be

payable to the association, a mortuary premium, for such an amount as the executive committee of the association may deem requisite, which amount shall be at such rates according to the age of each member, as may be established by the board of directors, and the net amount received, as provided in the constitution or by-laws of said association, less twenty-five per cent, to be set apart for the reserve or emergency fund, as hereinafter provided, shall go into the death fund to meet the current mortality of the association.

II.

II. Twenty-five per cent of the net receipts from mortuary premiums paid under this certificate, or policy of insurance, during a period of fifteen years from its date, shall be added to the reserve or emergency fund, which shall be held as provided in the constitution or by-laws of the association, deposited with a trust company or companies; deposited with departments constituted by government or legal authority; and upon the order of the board of directors of the association shall be securely invested in United States bonds, mortgages, or other interest bearing securities for the exclusive benefit of the members of the association, and the interest on the same as it accrues, shall be placed to the credit of the death fund, to be used in providing for the current death claims. The reserve or emergency fund above \$100,000 may be applied to the payment of claims in excess of the actuaries' tables of mortality, and when any claim by

death is due after a mortuary premium call upon each member of the association has been made, according to the rules of the association, to make up any deficiency that may then exist in the death fund. No claim is payable by the association except from the death fund of the association at the time of said death, or from any moneys that shall be realized to the said fund from the next mortuary premium call made, or from the reserve or emergency fund as herein provided.

III.

The annual mortuary premiums on this certificate, or policy of insurance, after the same has been in force fifteen years from its date, shall not include any further contributions to the reserve or emergency fund, nor shall the net amount of such annual mortuary premiums thereafter exceed the annual premiums required by the actuaries' tables of mortality, or the actual mortality experience of the association.

And after the expiration of said fifteen years there shall be credited to this certificate, or premium of insurance, if then in force, the equitable proportion of the then total surplus reserve or emergency fund accumulations, in which this certificate, or policy is then entitled to participate, including participation in the contribution to such surplus reserve or emergency fund under this certificate or policy, and also in the then equitable share of

such reserve or emergency fund accumulations contributed thereto by members (otherwise participating) whose policies have terminated by death, expiry or lapse, which said proportion or sum shall be then ascertained and determined by the actuary of the said association and the amount so ascertained and determined shall be available to the member insured under this certificate, or policy, in the manner following, that is to say:

First—At the option of said member, provided he shall notify said association in writing at least one (1) year before the expiration of said fifteen years, that he desires to have said sum paid as a tontine accumulation, then, and in that event, this certificate or policy, shall thereupon, on the completion of said term of fifteen years, be payable only as a cash tontine accumulation, so ascertained and determined as aforesaid, and shall be paid in cash to said member upon the surrender hereof to said association.

Second—If said member shall not exercise said option and such surplus accumulations shall not be applied as aforesaid, then the same, after the expiration of said period of fifteen years, shall be available as cash towards payment of future dues and mortuary premiums under this certificate or policy.

IV.

This contract is not binding until the written application thereof shall have been received, accepted, and this certificate or policy of insurance, issued by the associa-

tion, and delivered to said member, in person during his life, while in good health, nor until the admission fee is paid thereon. No agent of the association has authority to make, alter or discharge contracts, waive forfeitures, extend credit, or grant permits, and no alteration of the terms of this contract shall be valid, and no forfeiture thereunder shall be waived, unless such alteration or waiver shall be in writing and signed by the president or vice-president and one other officer of the association.

V.

A notice of a mortuary premium, or other notice addressed to a member, or other person at the postoffice address appearing on the books of the association, shall be deemed a sufficient notice, and affidavit of, or proof of addressing and mailing the same according to the usual course of business of said association, shall be taken and admitted as evidence, and shall be, constitute, and be deemed and held to be conclusive proof of due notice to said member and every person accepting or acquiring any interest thereunder. And in the event of the non-receipt by a member of a mortuary premium notice on or before the first week day of February, April, June, August, October and December of each and every year, it shall be nevertheless a conditioned precedent to the continuance of this certificate, or policy of insurance, in force, that an amount equal at least to the amount of the next preceding mortuary premium paid, shall be paid said asso-

ciation within thirty days from the first week day of February, April, June, August, October and December, of each and every year. Notice that a mortuary premium is payable to said Association on the first week day of February, April, June, August, October, and December of each and every year is hereby given and accepted, and any further or other notice is expressly waived.

VI.

Payment of dues and mortuary premiums as herein provided, shall be made by the member so long as such member may desire to keep this certificate or policy in force; provided, however, that if this certificate or policy has been in force for five years from its date, that then and in that event, and thereafter and before the expiration of ten years from its date, death shall occur within six months from the date of maturity of dues unpaid, or with six months from the date of the mortuary call which such member has omitted or neglected to pay, this certificate or policy shall, nevertheless be paid and payable to the beneficiary hereunder in the same manner as if payment of such dues or mortuary premiums had been made when due. And if this certificate or policy shall have been in force for ten years from its date, that then and in that event, and thereafter and before the expiration of fifteen years from its date, death shall occur within one year from the date of maturity of dues unpaid, or within one year from the date of the mortuary call which such member has omitted or neglected

to pay this certificate or policy shall nevertheless be paid and payable to the beneficiary hereunder in the same manner as if payment of such dues or mortuary premiums had been paid when due.

VII.

No assignment or transfer of this certificate or policy of insurance, shall be valid until a duplicate or a certified copy thereof shall be delivered to the association at its home office, and the same approved by its secretary or assistant secretary, and any assignment or transfer without delivery of the same or a certified copy thereof to the association and approval thereof by its secretary or its assistant secretary, shall render this certificate or policy of insurance, null and void. Under no circumstances shall the association be in any way responsible for the validity of any assignment or transfer. An insurable interest, existing at the time of the assignment or transfer must be shown by all claimants, at the time of claim thereunder; and claims by any creditor as beneficiary or assignee, shall not exceed the amount of the actual bona fide indebtedness of the member to him existing at the time of said death, together with any payments made to the association under this certificate, or policy of insurance, by such creditor, with interest at six per cent, per annum, and this certificate, or policy of insurance, as to all amounts in excess thereof shall be void.

VIII.

The proof of the death by which this contract matures shall include full and true answers, under oath, to all questions asked by the association, relating to the life, health and death of the member. When proof of death shall be made by presumption arising from disappearance or circumstantial evidence, no claim shall accrue or be payable until the presumption of death shall by the rules of law be complete, and only on the further condition that all dues and mortuary premiums under this certificate, or policy of insurance, shall continue to be paid to the association until the completion of said period in the same manner and at the same times as though said member were living.

IX.

Death of the member by his own hand, whether voluntary or involuntary, sane or insane at the time, is not a risk assumed by the association in this contract, but in every such case there shall be payable, subject to all the conditions of this contract, only a sum equal to the amount of the mortuary premiums paid by said member, with six per cent. interest per annum; but the board of directors or the executive committee of the association, at their option, may in such case order such further payment as may to them seem just and equitable, not ex-

ceeding in the aggregate the maximum amount of this contract.

X.

This contract shall be governed by, subject to, and construed only according to the laws of the State of New York, the place of this contract being expressly agreed to be the home office of said association in the city of New York; and said association shall not be held liable, and no action at law or suit in equity shall be brought or maintained hereon or recovery had, unless such action or suit is commenced within one year from the date of the death of said member; and if any action or suit is brought after that time the lapse of time shall be a conclusive bar thereto.

XI.

No personal liability of the member is incurred by becoming a member of this association, and the continuance of this certificate, or policy of insurance, and payments by the member are voluntary, at the option of the member, to continue only so long as the member may desire to keep this certificate, or policy of insurance, in force, but a failure to make the payments as herein stipulated will terminate this contract. This contract, on the part of the association, is a bi-monthly term contract, renewable at the option of the member, before expiration upon payment of the dues and mortuary premiums at the times and in the manner in this contract provided.

XII.

This certificate, or policy of insurance, is also issued and accepted subject to the express condition that if any of the payments stipulated in this contract shall not be paid on or before the day of the date as provided in this contract, at the home office of the association in the city of New York, or to a duly authorized collector of the association upon a receipt signed by its president, secretary or treasurer; or if said member shall enter any military or naval service whatsoever (the militia when not in actual service excepted), without the consent of this association given in writing by the president or secretary thereof; or if death shall be caused by or from the effects of engaging in any duel or in violation of any law, or at the hands of justice; or if any statement made in the application for this certificate, or policy of insurance, is in any respect untrue, or if any of the agreements in said application are violated by said member; then, and in each and every such case, the consideration of this contract shall be deemed to have failed and this certificate, or policy of insurance, shall be null and void and all payments made thereon shall be forfeited to the association.

[Endorsed on the back as follows]: No. 86796. The dues and mortuary payments on this Policy are payable to the Association direct. Agents are only authorized to collect the same on presentation of receipts signed by its president, secretary, or treasurer. "Mutual Reserve

Fund Life Association." Potter Building, Park Row, New York, U. S. A. Cash surplus over \$1,885,000.00 Policy of Insurance. Edward Jay Curtis. Date July 17th, 1889. Amount, \$6000. Admission fee, \$24. Annual dues, \$18. Members must send to the New York office of the association prompt notice of any change in postoffice address. Always give number of policy in writing to the office.

State of Idaho,)
 County of Ada.) ss.

J. K. Dubois, being duly sworn, says as follows:

1st. That I am duly appointed, qualified and acting administrator of the estate of the said Edward Jay Curtis, deceased, and am the plaintiff named in the foregoing action.

2nd. I have read the foregoing complaint and know the contents thereof, and the same is true of my own knowledge, except as to those matters therein stated to be upon information and belief, and as to those matters I believe it to be true.

(Signed)

J. K. DUBOIS,

Plaintiff.

Subscribed and sworn to before me this 23rd day of April, 1896.

[Seal]

JONAS W. BROWN,

Notary Public.

[Endorsed]: Complaint. Filed July 25th, 1896, at 9:30 A. M. Chas. S. Kingsley, Clerk. By Geo. W. Lamoreau, Deputy

In the Circuit Court of the United States, Ninth Judicial Circuit, in and for the Central Division of the District of Idaho.

J. K. DUBOIS, As Administrator of
the Estate of EDWARD JAY CUR-
TIS, Deceased,

Plaintiff,

vs.

MUTUAL RESERVE FUND LIFE
ASSOCIATION,

Defendant.

Answer.

Comes now the defendant, and for answer to plaintiff's complaint on file herein, admits, denies and alleges.

I.

Defendant admits and alleges that at all the times mentioned in said complaint it was, and still is, a corporation formed, organized and existing under and by virtue of chapter 267 of the Laws of 1875, and of chapter 175 of the Laws of 1883 of the State of New York, receiving and accepting members upon the terms and provi-

sions of written applications for membership, and under and subject to all the provisions of its constitution or by-laws, whereby, as in such applications and the certificates of membership or policies of insurance issued thereon, certain benefits accrue as therein provided, and not otherwise.

II.

Defendant alleges that on or about the 9th day of July, 1889, a certain application in writing, dated on that day, and signed by one Edward Jay Curtis in the complaint herein mentioned, was made to the defendant association, wherein and whereby a certificate of membership or policy of insurance was applied for to be issued payable to the legal representatives of said Edward Jay Curtis, which said certificate of membership or policy of insurance is the certificate or policy designated in the complaint herein, or intended so to be, and which said application is the application referred to in said certificate or policy, to which said application this defendant refers, and hereby makes the same a part of this answer.

That this defendant relying upon, and in consideration, among other things, of the aforesaid application, and the statements therein contained, did, after the presentation to it of the said application, and on or about the 17th day of July, 1889, issue to the said Edward Jay Curtis the certificate of membership or policy of insurance mentioned and described in the complaint herein, or intended so to be, and not otherwise.

This defendant denies that the said certificate or policy of insurance is fully and correctly described in the complaint herein, and denies that the copy thereof which purports to be annexed to the said complaint, marked Exhibit A, is in all respects a true and correct copy of said certificate or policy and defendant begs leave to refer to said original certificate or policy when the same shall be produced and proved by the said plaintiff upon the trial of this action.

III.

Defendant has no knowledge, information or belief sufficient to enable it to answer the allegations set forth and contained in paragraph III of plaintiff's said complaint, and therefore denies the same.

IV.

Defendant has no knowledge, information or belief sufficient to enable it to answer the allegations set forth and contained in paragraph IV of plaintiff's said complaint, and therefore denies the same.

V.

Defendant has no knowledge, information or belief sufficient to enable it to answer the allegations set forth and contained in paragraph V of plaintiff's said complaint, and therefore denies the same.

VI.

Defendant has no knowledge, information or belief sufficient to enable it to answer the allegations set forth and contained in paragraph VI. of plaintiff's said complaint, and therefore denies the same, and the whole thereof.

VII.

Defendant denies that the said Edward Jay Curtis, deceased, or the plaintiff, or either of them, duly performed all or any of the conditions of said policy of insurance on their or either of their parts to be performed, as will hereafter more fully appear.

VIII.

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Defendant admits that on or about February 4th, 1896, plaintiff informed defendant of the alleged death of the said Edward Jay Curtis and that it thereupon declared that the said certificate or policy had lapsed for non-payment of a mortuary call or assessment sometime prior thereto. Defendant denies that it denied all liability whatsoever on or under the said contract of insurance, and denies that it refused to pay the same, or any part thereof.

IX.

Defendant admits that it has not paid the said sum of

six thousand dollars as provided for in said policy of insurance, or any part thereof, and denies that said sum of six thousand dollars, or any other sum or amount, is now due thereon, or due at all from the defendant to the said plaintiff as such administrator, or otherwise.

For a further and separate answer herein, the defendant alleges:

I.

Defendant repeats the allegations contained in the paragraph marked I of its first defense hereinbefore set forth, and makes them a part of this defense as though set forth fully and at large herein.

II.

Defendant alleges that on or about the 9th day of July, 1889, the said Edward Jay Curtis made application to it, wherein and whereby a certificate of membership or policy of insurance was applied for to be issued, payable to the legal representatives of the said Edward Jay Curtis, which said certificate of membership or policy of insurance is the certificate or policy designated in the complaint herein, or intended so to be, and which said application is the application referred to in said certificate or policy, and a true and correct copy of which said application is hereto attached and made a part hereof, and marked Defendant's Exhibit A.

Defendant alleges that in and by said application it was agreed by the said Edward Jay Curtis that the answers and statements therein, Parts 1 and 2, whether written by the applicant or not, were warranted to be full, complete and true, and that said agreement, and the constitution or by-laws of the association, with the amendments thereto, together with the said application, were hereby made part of any policy that might be issued thereon.

III.

That this defendant relying upon, and in consideration of, among other things, the aforesaid application, and the statements therein contained, did, after the presentation to it of the said application, and on or about the 17th day of July, 1889, issue to the said Edward Jay Curtis the certificate of membership or policy of insurance mentioned or described in the complaint herein, or intended so to be, and not otherwise.

Defendant denies that the said certificate or policy of insurance is fully and correctly described in the complaint herein, or that the alleged copy thereof which is attached to said complaint marked Plaintiff's Exhibit A. is in all respects a true and correct copy of said certificate or policy, and begs leave to refer to said original certificate or policy of insurance when the same shall be produced and proved by the said plaintiff upon the trial of this action.

IV.

That thereafter and on the day of July, 1889, said Edward Jay Curtis received and accepted said certificate of membership or policy of insurance; accepted, agreed and assented to all the terms, conditions and agreements, and rules and regulations of said defendant association as contained and set forth in the said application for and said certificate or policy of insurance, and in the constitution or by-laws of said defendant association.

V.

That the said certificate of membership or policy of insurance, and the membership of the said Edward Jay Curtis, and all the rights of said Edward Jay Curtis, and of the plaintiff herein, became, and were, and are subject to the terms and provisions of the constitution or by-laws of the defendant association, all of which are hereby referred to and made a part of this answer, and a true and correct copy of which is hereto attached and made a part hereof, and marked Defendant's Exhibit B.

VI.

That one of the conditions, provisions and agreements contained in said application for and said certificate of membership or policy of insurance, and said constitution

or bylaws, and which was accepted, agreed and assented to by the said Edward Jay Curtis, was the payment of all mortuary premiums at the home office of the said defendant association in the city of New York, or to an authorized local collector within thirty days from the first week day of the months of February, April, June, August, October, and December of each and every year during the continuance of said certificate of membership or policy of insurance, and in the case of the failure by said Curtis to pay said mortuary premiums at said times, and in manner and form therein and heretofore set forth then, and in such case, the consideration of said contract should be deemed to have failed, and the certificate of membership or policy of insurance issued to said Curtis as aforesaid, and sued upon herein, should be null and void, and all payments made thereon should be forfeited to the defendant association.

VII.

That on the 1st day of July, 1893, an assessment or mortuary call, or premium known as mortuary call No. 68, in the sum of \$33.96 (the same being one of the bi-monthly payments referred to in paragraph II. of plaintiff's said complaint) became due and payable at the home office of said association or to some duly authorized agent of said defendant association in accordance with the terms and conditions of said contract of insurance as aforesaid, but to pay the same said Edward Jay Curtis failed and refused, and did so fail and refuse to pay

the same up to time of his death, and the same has never been paid by the said Edward Jay Curtis, or by any one for or on behalf of the said Edward Jay Curtis to this association, or to any duly authorized agent or collector of this said defendant.

VIII.

That the said Edward Jay Curtis had due notice, in accordance with the terms and conditions of the said contract of insurance that said mortuary call No. 68 aforesaid was due and payable in manner and form as in said contract of insurance set forth and contained, and that said Edward Jay Curtis was never reinstated in said defendant association.

IX.

That by reason of the failure of said Edward Jay Curtis to pay said sum of \$33.96 due upon said mortuary call No. 68 aforesaid, on or before the first day of July, 1893, the date that the same became due and payable, said contract and policy of insurance issued to him as aforesaid and sued upon herein, became, and was, and is, and has remained, null and void, and of no force or effect, and all payments made thereon were forfeited to the defendant association.

Wherefore defendant having fully answered the complaint of the plaintiff herein, prays to be hence dismissed with its costs in this behalf expended.

HAWLEY & PUCKETT,
Attorneys for Defendant.

State of New York,)
 City and County of New York.) ss.

Charles W. Camp. being first duly sworn according to law, deposes and says: that he is the secretary of the Mutual Reserve Fund Life Association, a corporation, the defendant herein, and as such officer makes this verification; that he has read the above and foregoing answer and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be on information or belief, and as to those matters he believes it to be true.

CHARLES W. CAMP.

Subscribed and sworn to before me this 2nd day of December, 1896.

SEWELL T. TYNG,
 Notary Public, N. Y. Co. No. 66.

State of New York,)
 City and County of New York,) ss.

I, Henry D. Purroy, clerk of city and county of New York, and also clerk of the Supreme Court for the said city and county, the same being a court of record, do hereby certify, that Sewell T. Tyng, before whom the annexed deposition was taken, was, at the time of taking the same, a notary public of New York, dwelling in said city and county, duly appointed and sworn, and authorized to administer oaths to be used in any court in said State, and for general purposes; that I am well acquaint-

ed with the handwriting of said notary, and that his signature thereto is genuine, as I verily believe.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said court and county, the 2 day of Dec. 1896.

[Seal]

HENRY D. PURROY,
Clerk.

To be attached to and form part of my application for a policy of \$6000 issued by the Mutual Reserve Fund Life Association and numbered 86,796.

I, Edward J. Curtis of Boise City, County of Ada, Territory of Idaho, do hereby make oath that to the best of my knowledge and belief, I was born on the 13th day of December, and my age at nearest birthday is 57.

EDWARD JAY CURTIS.

Sworn to before me this 31st day of July, 1889.

S. H. HAYS,
Clerk Supreme Court, Idaho Ter.

Edward J. Curtis,
Secretary,
86796.

Department of the Interior,
Secretary's Office, Idaho.

Boise City, July 18, 1889.

To the Mutual Reserve Fund Life Association of New York City:

I hereby authorize you to change the amount applied for from five thousand to read six thousand.

EDWARD JAY CURTIS.

Signed in my presence.

S. L. WINNER,
Genl. Mgr. for Oregon and Idaho.

I approve as safe the addition of one thousand dollars on the application of Edward Jay Curtis; that is to read six thousand instead of five thousand as applied for.

JESSE K. DUBOIS, M. D.

*In the Circuit Court of the United States, Ninth Judicial
Circuit, in and for the Central Division of the State
of Idaho.*

J. K. DUBOIS, As Administrator of
the Estate of EDWARD JAY CUR-
TIS, deceased.

Plaintiff,

vs.

MUTUAL RESERVE FUND LIFE
ASSOCIATION, OF NEW YORK,
Defendant.

Stipulation of Facts.

It is hereby stipulated and agreed, by and between the parties to the above entitled action, that the following statement of facts shall constitute the evidence in said action, and that the action may be tried by the court, without a jury.

I.

That the defendant now is, and at all times hereinafter mentioned was, a corporation, duly organized and exist-

ing under and by virtue of the laws of the State of New York, and engaged in the business of writing life insurance, and making contracts, insuring the life of its patrons, in the State of New York and in the State of Idaho.

II.

That on the 17th day of July, 1889, the defendant insured the life of said Edward Jay Curtis, in the sum of six thousand dollars, and issued to him the policy of insurance, as set forth in plaintiff's complaint, and delivered said policy to him, while he was in good health; and that said Edward Jay Curtis paid the admission fee thereon; and that said policy is hereby admitted in evidence and is made a part of this stipulation.

III.

That on the 29th day of December, 1895, at Boise City, in Ada County, State of Idaho, the said Edward Jay Curtis, died; that Edward Jay Curtis died without leaving a will or testament.

IV.

That on the 27th day of January, 1896, J. K. Dubois was regularly and legally appointed, by an order duly entered and made in the probate court of said Ada county, and State of Idaho, as administrator of the estate of

said Edward J. Curtis, deceased; that thereafter, the said J. K. Dubois, duly qualified as such administrator, by giving a bond, as required by law, and taking the oath of office and entered upon the discharge of his duties as such administrator, and ever since, and still is such administrator, and acting as such.

V.

That the death of said Edward J. Curtis was not caused by his own hand, or by the effect of engaging in any duel, or any violation of the law, or at the hands of justice.

VI.

That said Edward J. Curtis did not enter any military service, or any naval service, company or regiment, when in actual service or otherwise, during his lifetime, or since the issuing to him of said policy of insurance.

VII.

That on or about February 4th, 1896, this plaintiff informed said defendant of the death of said Edward J. Curtis, and thereupon defendant denied all liability, whatsoever, on or under said contract of insurance.

VIII.

That the defendant has not paid the sum of six thousand dollars, as called for in said policy of insurance, nor any part thereof.

IX.

That the said Edward J. Curtis and the plaintiff, and each of them duly performed all the conditions of said policy of insurance, on their part to be performed, except as follows:

That said Edward J. Curtis failed to pay an assessment, or mortuary call, or premium, known as mortuary call No. 68, in the sum of \$33.96, which become due according to the terms of said policy of insurance, on the first day of July, 1893; and that the same has not been paid by said Edward J. Curtis, or any other person or persons, for him; and that said non-payment was not condoned or acquiesced in by defendant; that other assessments, mortuary calls and premiums have become due and payable, since the said mortuary call No. 68, but none of them have been paid.

It is also stipulated and agreed, that Bennett W. T. Amsden, would testify in said action, if present, to the facts set forth in his affidavit, deposition or sworn statement herewith filed; and that the same, with the exhibits thereto attached, may be admitted in evidence, so far as it, said statement, is relevant and competent under

the pleadings in this action; and shall constitute a part of this agreed statement of facts.

A. A. FRASER and
GEO. H. STEWART,
Attorneys for Plaintiff.

HAWLEY & PUCKETT,
Attorneys for Defendant.

[Endorsed]: No. 127. In the Circuit Court of the United States, Ninth Judicial Circuit, in and for the District of Idaho. J. K. Dubois, Plaintiff, vs. The Mutual Reserve Fund Life Association of New York. Stipulation of facts. Filed Dec. 19th, 1896. A. L. Richardson, Clerk.

In the Circuit Court of the United States, Ninth Judicial Circuit, in and for the Central Division of the District of Idaho.

J. K. DUBOIS, As Administrator of
the Estate of EDWARD JAY CUR-
TIS, deceased.

Plaintiff,

against

MUTUAL RESERVE FUND LIFE
ASSOCIATION,

Defendant.

Affidavit of Bennett W. T. Amsden.

City and County of New York, ss.

Bennett W. T. Amsden being duly sworn, says, that he is forty-one years of age, resides in the city of New York, and is an officer, to-wit, the cashier, of the Mutual Reserve Fund Life Association, the defendant in the above entitled action, and has been in the employ of the said defendant for over ten years last past. That during the months of June, July, August, September, October, and November, 1893, he was assistant secretary of the Mu-

tual Reserve Fund Life Association, the defendant above named, in charge of the assessment department, and as such officer in charge of such department kept a record of the entire membership of the association, the amount of assessments such members were liable for and of the mailing of notices of the regular assessments upon such members, and also had entire charge of the preparation and mailing of such notices. That on or about the 1st day of June, 1893, a notice of the assessment known as mortuary call number 68, under the certificate or policy of Edward Jay Curtis, of Boise City, Idaho, numbered 86796, was securely enclosed in a postpaid sealed envelope, directed to the said Edward Jay Curtis, Boise City, Idaho, and as so sealed addressed and stamped was deposited in the general postoffice in the city of New York by this deponent at 5 o'clock in the afternoon of the 1st day of June, 1893, according to the usual course of business and the constitution or by-laws of such association, and the address upon such envelope to which said notice was sent was, and is, the last and only address of said Edward Jay Curtis appearing upon the books of such association; that the amount of said assessment was \$33.96; that the said notice required the said Edward Jay Curtis to pay the sum of \$33.96 on or before the first day of July, 1893; that said address is the same address to which all prior notices of assessments were sent to the said Edward Jay Curtis, and is the address to which the said Edward Jay Curtis directed that all notices under his certificate or policy should be sent, and

that all prior assessments under the said certificate or policy of the said Edward Jay Curtis had been paid, but that the said assessment due and payable on or before the first day of July, 1893, or within thirty days after the first day of June, 1893, and which was required to be paid by the notice aforesaid known as mortuary call number 68 has not been paid. That the regular course of business of the said association in the months of June, July, August, September, and October, 1893, in preparing, mailing and sending notices of assessments was as follows: That envelopes were addressed to each member of said association appearing upon the books of the association, and notice to each of said members with the amounts of their respective assessments was written by a clerk. They were then compared and verified, one clerk holding the book containing the list of members, with their policy numbers, amounts of their respective assessments and addresses, and another reading off the notices and envelopes. The notices were then folded and enclosed in their respective envelopes, sealed, stamped and registered in regular numerical order, and when so sealed and stamped were checked upon the books of the association, one person calling the number of the policies, and the names and addresses from the envelopes, and another checking from the book as they were called, and as often as they were called they were deposited in a United States mail bag furnished to the association by the postal authorities for that purpose, all being done under my personal supervision. The mail bag was then

deposited in the general postoffice of the city of New York by myself. This course was followed with reference to the assessment under the said mortuary call number 68, and with reference to the notice of said assessment mailed to Edward Jay Curtis, as aforesaid. No notice of assessment was sent to the said Edward J. Curtis subsequent to that of said mortuary call number 68, nor was the said Edward Jay Curtis ever reinstated as a member of said association, but a notice that his said certificate or policy had lapsed, and stating conditions under which it might be reinstated, together with a blank form of application for reinstatement was enclosed in a sealed, post-paid wrapper directed to said Edward Jay Curtis, Boise City, Idaho, and deposited by me in the general postoffice of the city of New York on the 18th day of July, 1893, according to the usual course of business of such association, such notice being called a delinquent notice. A true and correct copy of the notice mortuary call number 68, sent to Edward Jay Curtis under his certificate or policy number 86,796, as hereinbefore testified by me, and a true and correct copy of the envelope in which the same was enclosed, addressed and mailed to the said Edward Jay Curtis aforesaid, and a true and correct copy of said delinquent notice, and of the envelope containing the same so addressed and mailed as aforesaid, and of the blank form of said application for reinstatement enclosed therein are hereto attached and made part of this affidavit, and marked "Exhibits A, B, C, D, and E," respectively.

B. W. T. AMSDEN,

NOTICE.

This Association
 and \$102,325.57 with
 the payment of
WIDOWS, ORPHAN

Our Surpl

POLICY

No. 8679

Month. 7 Day. 17

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 82 69 66
 82 73 60
 45 73 60
 70 77 63

ere we have no authorized collector, an Express Money Order, which costs you but 5 cents for amounts of \$5.00 or under, can be
 at any office of the American, National, United States, Wells, Fargo & Co.'s, Pacific, or Northern Pacific Express Companies.
 simple and satisfactory remittance for the insured and the most convenient for this office. Please send your remittances in this
 and always make orders payable to the Association.

Members in making their p
 In writing to the Assoc

Mutual Reser

Pot

*Herewith please find i
 in payment of Mortuary Call
 acknowledge receipt of same.*

Was this Notice addressed i

If not properly addressed, please fill
your books, and send future notic

No. of Street,.....

County of.....

AD

Members desiring to pay six months or
 and proper receipts will be furnished. To det
 multiply the same by the number of thousand
 payments; but should the mortality of the A
 fund, through the payment of said maximum
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 ized to collect the same.

TABLE OF MAXIMUM MORT

These Rates i

AGE.	1	2
	AVERAGE AMOUNT WHICH MAY BE COLLECTED EVERY TWO MONTHS.	MAXIMUM OR LARGEST AMOUNT WHICH CAN BE COLLECTED ANNUALLY.
25	\$1 80	\$10 76
26	1 81	10 84
27	1 82	10 93
28	1 84	11 03
29	1 86	11 13
30	1 87	11 24
31	1 89	11 35
32	1 91	11 48
33	1 94	11 63
34	1 96	11 77
35	1 99	11 93
36	2 02	12 12

If errors occur, or communications remain unanswered, address E. B. HARPER, President, stating particulars.

June 1st, 1893.

NOTICE.—MORTUARY CALL No. 68 PART I. Mutual Reserve Fund Life Association,

Potter Building, 38 Park Row, New York.

This Association has \$200,000.00 deposited with the Insurance Department of the State of New York and \$102,325.57 with Canada Insurance Department, for the exclusive benefit of its members and as a guarantee of the payment of its certificates in full, and it has already paid more than \$15,500,000.00 in cash to the WIDOWS, ORPHANS and representatives of its deceased members.

Our Surplus Reserve or Emergency Fund is Over \$3,425,000.00.

New York, June 1st, 1893.

POLICY
No. 86796 Mr. Edward J. Curtis
D. D. 7 17
Idaho

MORTUARY CALL No. 68.	
\$	cts.
<u>33</u>	<u>96</u>

Please take notice that an Assessment or Mortuary Call is hereby made upon you pursuant to the order of the Executive Committee of the Association, for the above amount, to be paid within thirty days from the date of this notice, in accordance with the conditions of your certificate or policy and the Constitution or By-Laws of the Association in the City of New York.

The above payment must be made on or before July 1, 1893, at the Home Office of the Association in the City of New York, or to its duly authorized local Treasurer, whose name is stamped upon this notice, and who is furnished with a receipt signed by the Treasurer of the Association. If the same is not paid within the time stated, the policy and all payments thereon will become forfeited and void, and your membership with the Association will expire with all rights thereunder.

Notice is hereby given that the further regular stated Assessments or Mortuary Calls, each for at least an amount equal to the amount of this Assessment or Mortuary Call, are hereby made upon you, which will be due and payable, the first within thirty days from the first day of August, 1893, and the other within thirty days from the second day of October, 1893, the cause and purposes of this and of each of said further regular stated Assessments or Mortuary Calls being as provided in Article V, Section 1, of the Constitution, as follows:

"The Mortuary Department shall be distinct from the other Departments of the Association, and all moneys received from the Mortuary Calls, less the cost of collecting, shall pass through said department, and after deducting expenses thereof, governmental taxes, legal and other expenses in defending or protecting the Association against the payment of unadmitted or fraudulent claims, shall be deposited by the Treasurer, in Banks or Trust Companies designated by the Board of Directors, to an account to be known as 'The Mortuary Account of the Mutual Reserve Fund Life Association,' and shall only be withdrawn from said account by transfer on the order of the President and Treasurer to the 'Reserve Fund,' or for investment in such securities as may be required by the laws relative to deposits to secure admission for the transaction of business by the Association, as may be approved by the Board of Directors of the Association, and which securities shall be deposited, as required by Article XI, Section 2, of the Constitution; or in settlement of death claims under the certificates of the Association, said claims having been first approved by the Executive Committee of the Association."

The enclosed Part II, which is a part of this notice, states amount paid on last death claim paid; the name of the deceased member and maximum face value of the certificate or policy, which was paid in full.

The Constitution or By-Laws provide: "On the first week day of the months of February, April, June, August, October, and December of each year, an assessment shall be made upon the entire membership in force, at the date of the last death of the audited death claims, prior thereto, for such a sum as the Executive Committee may deem sufficient to meet the existing claims by death, the same to be apportioned among the members, according to the age of each member."

Provision for Limiting the Cost to the Maximum Rates at Age of Entry.

The following resolution was offered at the Annual Meeting of Members, held January 23, 1899, by General Isaac H. Shields, of Philadelphia, Pa., and, after full discussion, unanimously adopted:

WHEREAS, The Mutual Reserve Fund Life Association was established upon the natural premium system of life insurance, which requires the members to pay simply their proportion of the death claims, with thirty-three per cent. additional thereto, (which is equivalent to 25 per cent. upon the gross) which additional sum has for its object the creation of a reasonable surplus reserve emergency fund to provide against unforeseen contingencies, its foundation principles being in opposition to accumulations of vast sums of money taken from the pockets of the policy holders; and,

WHEREAS, The aforesaid surplus reserve emergency fund is rapidly increasing, and has already reached the enormous sum of \$1,885,000; therefore,

Resolved, That in the event any sums are hereafter required for the payment of death claims, in excess of the sums realized from current bi-monthly mortuary premium calls at the maximum rates at age of entry as established by the Association, that are applicable to the death funds (which rates are based upon the American Table of Mortality, with 33 per cent. loading for the Reserve Fund), the Board of Directors shall have power to pay such death claims in excess thereof from the current receipts that are applicable to the surplus reserve emergency fund, provided that said surplus reserve emergency fund shall always be maintained in accordance with the provisions of the Constitution or By-Laws.

The sending of this notice or acceptance of the above premium shall not be held to constitute a forfeiture caused by non-payment of any previous sum when due, under said certificate or policy.

Remittances must be by valid Draft, Check, Post Office or Express Money Order. Payment by mail or payments made to any person whose name is not officially stamped on this notice, is unauthorized and at the member's own risk. Agents or local Treasurers are not authorized to make, alter or discharge contracts, grant credits or waive forfeitures.

You are respectfully urged to remit the amount at once and not wait until the expiration of the time, thereby avoiding the expiry of your insurance.

Please return this notice when you send remittance, also notify the Association of any change in your post office address.

The above Mortuary Call is NOW due, and should be PAID AT ONCE.

If not paid on or before July 1, 1893, the Policy will expire and become null and void. All remittances to be made payable to the order of the Mutual Reserve Fund Life Association.

F. T. BRAMAN,

E. B. HARPER,

Secretary.

President.

NOTICE.—If the name of an Authorized Local Treasurer is not stamped on this notice payment must be made to the Home Office of the Association, in New York.

Members in making their payments will please fill up and RETURN this notice.
 In writing to the Association always give the number of Policy.

Dated at _____ 189

Mutual Reserve Fund Life Association,

Potter Building, 38 Park Row, New York.

Herewith please find inclosed.....Dollars
 in payment of Mortuary Call No. 68 on my Policy No..... Will you please
 acknowledge receipt of same.

Was this Notice addressed correctly? (answer yes or no).....

If not properly addressed, please fill up and sign the following order, viz.: Please change my address upon
 your books, and send future notices to my present Post Office, as follows:

No. of Street,.....Name of Post Office.....

County of.....State of.....

Name.....

ADVANCE PAYMENTS.

Members desiring to pay six months or a year in advance, can do so by remitting the maximum rates, as stated in the tables, and proper receipts will be furnished. To determine the correct amount, see the annual maximum rate at the age of entry, multiply the same by the number of thousands of insurance carried, the result will be the proper amount for one year's mortuary payments; but should the mortality of the Association during the year call for a smaller sum than the amount paid to the death fund, through the payment of said maximum rates, the excess paid will be applied to future payments after the expiration of the year. This payment must be made to the HOME OFFICE or to a regular authorized Local Treasurer. Agents are not authorized to collect the same.

TABLE OF MAXIMUM MORTUARY PREMIUMS FOR EACH \$1,000 OF INSURANCE.

These Rates include the 25% for the Reserve or Emergency Fund.

AGE.	1 AVERAGE AMOUNT WHICH MAY BE COLLECTED EVERY TWO MONTHS.	2 MAXIMUM OR LARGEST AMOUNT WHICH CAN BE COLLECTED ANNUALLY.	LEVEL PREMIUM RATES, WHICH ARE MORE THAN DOUBLE THE AMOUNT REQUIRED TO PAY THEIR DEATH CLAIMS IN ANY YEAR DURING THE PAST FORTY YEARS.	AGE.	1 AVERAGE AMOUNT WHICH MAY BE COLLECTED EVERY TWO MONTHS.	2 MAXIMUM OR LARGEST AMOUNT WHICH CAN BE COLLECTED ANNUALLY.	LEVEL PREMIUM RATES, WHICH ARE MORE THAN DOUBLE THE AMOUNT REQUIRED TO PAY THEIR DEATH CLAIMS IN ANY YEAR DURING THE PAST FORTY YEARS.
25	\$1 80	\$10 76	\$19 89	43	\$2 37	\$14 24	\$35 05
26	1 81	10 84	20 40	44	2 43	14 60	36 46
27	1 82	10 93	20 93	45	2 47	14 96	37 97
28	1 84	11 03	21 48	46	2 57	15 43	39 58
29	1 86	11 13	22 07	47	2 67	16 00	41 30
30	1 87	11 24	22 70	48	2 78	16 68	43 13
31	1 89	11 35	23 35	49	2 91	17 48	45 09
32	1 91	11 48	24 05	50	3 06	18 37	47 18
33	1 94	11 63	24 78	51	3 41	20 35	49 40
34	1 96	11 77	25 56	52	3 78	22 70	51 78
35	1 99	11 93	26 38	53	4 16	24 95	54 31
36	2 02	12 12	27 25	54	4 53	27 20	57 02
37	2 05	12 32	28 17	55	4 91	29 45	59 91
38	2 09	12 55	29 15	56	5 28	31 70	63 00
39	2 13	12 79	30 19	57	5 66	33 95	66 29
40	2 20	13 17	31 30	58	6 03	36 20	69 82
41	2 25	13 52	32 47	59	6 41	38 45	73 60
42	2 31	13 88	33 72	60	6 78	40 70	77 63

The maximum or largest amount above stated is based upon the Mortality Table and the experience of the Association, and is for current ages.

THE MUTUAL RESERVE FUND LIFE ASSOCIATION offers ONE THOUSAND DOLLARS REWARD for the Name of any honest death claim due and unpaid which it has not paid in full, the fact to be determined by any two Bank Presidents in New York City, and to cover the entire history of this Association.

OFFICIAL EXAMINATIONS.

The books and accounts of the Mutual Reserve Fund Life Association have been examined within the past ten years by the following INSURANCE COMMISSIONERS, and after each of said examinations a complete indorsement has been given, certifying that the books were correctly kept, the income properly applied, and every honest death claim promptly paid in full:

- Hon. John A. McCall.** Insurance Commissioner, New York.
Engue Pringle. Insurance Commissioner, Michigan.
H. J. Reinmund. Superintendent of Insurance, Ohio.
Chas. Shandrew. Insurance Commissioner, Minnesota.
Philip Cheek, Jr. Insurance Commissioner, Wisconsin.
Edwin W. Bucklin. Insurance Commissioner, Rhode Island.
E. W. Knott. Deputy Superintendent and Examiner, Missouri.
Aug. F. Harvey. Actuary, Missouri.
A. L. Carey. Commissioner of Insurance of North Dakota.

- Hon. Louis B. Schwanbeck.** Insurance Commissioner, Colorado.
M. H. Dyer. Examiner Insurance Department, W. Virginia.
Lucien McAdam. Actuary, West Virginia.
Price, Waterhouse & Co. Chartered Accountants, of London, England.
Hon. Elizur Wright. Actuary and Ex-Insurance Commissioner of the State of Massachusetts.
W. G. Haycox. Actuary of the Insurance Department, North Dakota.

In addition to the various examinations by the above INSURANCE COMMISSIONERS, nearly ONE HUNDRED other Examinations have been made by Committees of Policy-Holders from the various sections of our country, Bank Experts, Actuaries, Accountants, Auditors and others, and in each instance complete indorsements have been received by the Association.

How to Remit.

At places where we have no authorized collector, an Express Money Order, which costs you but 5 cents for amounts of \$5.00 or under, can be obtained at any office of the American, National, United States, Wells, Fargo & Co.'s, Pacific, or Northern Pacific Express Companies. It is a safe, simple and satisfactory remittance for the insured and the most convenient for this office. Please send your remittances in this manner, and always make orders payable to the Association.

Exhibit B.

Aff't. of B. W. T. Amsden, Dec. 2nd, 1896. S. T. Tyng. Mutual Reserve Fund Life Association, Potter Building, 38 Park Row, New York E. B. Harper, President. Edward J. Curtis, Boise City, Idaho. Mortuary Call. Please forward if away.

PLEASE RETURN THIS WITH YOUR REMITTANCE.

Mutual Reserve Fund Life Association,

(INCORPORATED)

MUTUAL RESERVE BUILDING, BROADWAY & DUANE ST.

J. HARPER, Founder.

F. A. BURNHAM, President.

New York, *July 18th 1893*

Mr. Edward J. Curtis,

Will you please inform us by return mail whether or not you
have paid the Annual Dues and Mortuary Call No. *68*

your Policy No. *86796* amounting to \$ *51.96*.

Annual Dues, \$ *18.00* Due, *July 17, 1893*

Mortuary Call, \$ *33.96* Due, *June 1, 1893*

Our books show that the above Annual Dues and Mortuary Call remain
unpaid, and that your policy has expired.

If you have paid or remitted the above, please state actual date of same,
whether it was by check or otherwise, to whom paid or remitted; and if you
have a receipt for such payment, the name of the person signing or counter-
signing same, together with the date of the receipt.

Remittances are frequently received without advice as to name of the
member remitting the same, or number of the policy to which credit should be
given; hence the correct credit cannot be made to the member making the pay-
ment.

If through an oversight or misunderstanding the above has not been
paid, and you should desire to reinstate your policy, you may be reinstated
upon furnishing the Association with a satisfactory Application for Reinstatement
and Warranty of Health, and under the conditions thereof and subject
to the approval of the Executive Committee, and payment of amount of your
Annual Dues and Mortuary Call as above.

The signature of the member to the application for reinstatement must be
certified to by some responsible person.

In any case, when the Association deems it necessary, a medical examination
will be required.

The sending of this notice shall not be held to waive any forfeiture or
expiration of said policy caused by non-payment of any amount when due.

CHARLES W. CAMP,

F. J. Braman Secretary.

Name,

My P. O. Address is.....

Was this notice addressed correctly?.....

We always regret to learn that misfortune has overtaken any one, and especially those of our own number, who have been members of the Association.

The blotting out of an estate, or the taking away of the protection to one family, of one or more thousand dollars, is certainly a misfortune.

We should be much pleased to have your name continued among our present army of one hundred thousand members, and it is with pride that we call your attention to the fact that this Association has already paid over Twenty-three Million Dollars in Cash to the widows and orphans of its deceased members, also to the fact that it has now on hand more than Three and Three-quarters Millions of Dollars in its Cash Surplus Reserve and Emergency Funds.

Mortuary Calls are made upon the members of the Association on the first week day of the months of February, April, June, August, October and December of each year.

All Mortuary Calls are due and payable at above dates respectively, and must be paid within thirty days of such dates, or the policy will expire.

Annual Dues are due and payable on the date stated in the policy (with out grace).

Members should pay their Mortuary Calls and Dues promptly, whether they receive notice or not, as they can tell from the above the exact time payments become due.

Mortuary Calls and Annual Dues are payable **only** at the **Home Office** of the Association, in the City of New York, or to an **Authorized Local Treasurer, whose name is stamped on the notice**, who is furnished with a receipt signed by the Treasurer of the Association, which must be duly countersigned.

Remittances must be by Draft, Check, Post Office or Express Money Order; cash sent by mail, or payments made to Agents, or other persons whose names are not stamped on the notice, are unauthorized and at the **member's own risk.**

Agents or Local Treasurers are not authorized to make, alter or discharge contracts, extend credits or waive forfeitures.

Members desiring to pay in advance can do so at the maximum rates, and they will be credited with such sums, thereby avoiding the liability of forfeiting their insurance through oversight, absence, or negligence of parties entrusted with making the payments. In case of the death of a member, the excess of an advance payment, if over and above the sum required for Dues and Mortuary Calls, will be returned.

Advance payments must be made to the Home Office, or to a regular authorized Local Treasurer.

Agents are not authorized to receive the same.

[OVER.]

Exhibit "D."

Aff't. B. W. T. Amsden Dec. 2nd 1896. S. T. Tyng. Mutual Reserve Fund Life Association. Potter Building, 38 Park Row, New York, E. B. Harper, President. Mortuary Call. Please forward if away. Edward J. Curtis, Boise City, Idaho.

Exhibit "E."

Aff't. B. W. T. Amsden. Dec. 2nd. 1896.

S. T. Tyng,

Application for Re-instatement of Membership and Warranty of Health.

To the Mutual Reserve Fund Life Association,
Potter Building, 38 Park Row, New York.

Whereas, a certain payment as hereinafter named under Policy No. for \$., issued to me, became due, and payable, viz: Mortuary Call No. due on the day of, 189.., for \$.

Annual dues due on the day of 189.., for \$. and by reason of the non-payment of said Mortuary Call or Dues, or both of them, when due, my membership and said policy expired.

Now, therefore, I, of aged years at last birthday, by occupation do hereby, by reason of

said expiry, make application to the Mutual Reserve Fund Life Association for reinstatement of my membership and of said Policy, and tender the amount of the past due payment as above, and in consideration thereof I agree as follows:

First.—I warrant that I am on this day of 189. ., of temperate habits, in good health, and free from all diseases and infirmities, and further, that, since the date of my original application for said membership and policy, I have not had any disease, injury, infirmity or illness, or had or sought any medical attendance or advice for any illness, disease or injury, except as herein stated in writing, viz.

.
.
.

Second.—I hereby agree that if any of the statements and warranties in said original application or herein, are not full, complete and true, that the acceptance by the Association of the above or any subsequent payment shall not reinstate my membership under said policy or create or continue any liability on the part of the association by reason of such payment.

Third.—I further agree that the acceptance of the above payment, after the same became due, shall not establish a precedent for the acceptance of the payment of future assessments or dues to the Association, nor shall any subsequent payment of the same upon said policy be deemed a waiver of this expiry or impair, waive, alter or

change any of the conditions of this Agreement or of said Policy; and I further agree that this agreement and warranty shall be and hereby is made part of my contract with said Association, under said policy, and the same shall be subject thereto.

Dated at this day of 189..

Witness of signature

Occupation of Witness

Address

.....

Signature of Applicant.

NOTICE. If the applicant has had any illness, or has consulted, or been attended by any physician since the date of the original application for above Policy he is required to obtain the written statement of such physician on the back hereof, stating the nature, date, duration of such illness, and in such cases the Policy shall not be reinstated until the application for re-instatement shall be approved by the Executive Committee of the Association in New York. Remittances must be made by valid draft, check, postoffice or express money order; cash sent by mail or payments made to agents or other persons whose names are not stamped on the notice are unauthorized and void and at the member's own risk. Agents, collectors, or local treasurers are not authorized to waive forfeitures, extend credit or reinstate lapsed members.

If for Mortuary only, strike out line Annual Dues, and if for Dues only, strike out Mortuary.

CERTIFICATE OF APPLICANT'S PHYSICIAN.

I, M. D., a practicing physician, do

hereby certify that I am personally acquainted with the applicant who signed the application and certificate on the reverse side hereof, and that I have personally known said applicant for years last past, and that I was consulted by said applicant or attended him from 18., to, 18., for*

.
.
.

Have you been consulted by or attended applicant for any ailment, disease or illness, other than stated above within the past five years?

If yes, when and for what?
.
.

I hereby certify, upon my honor as a physician, that the above is a full, complete, and true statement.

Dated at Signed M. D.
this day of, 189. . . P. O. Address.
.
.

* Please state fully the nature, date, duration and severity of the disease or illness for which you attended applicant or was consulted by him.

[Endorsed]: No. 127. In the Circuit Court of the U. S. Ninth Judicial Circuit, in and for the Dist. of Idaho. J. K. Dubois as Administrator of the estate of Edward J. Curtis, Plaintiff, vs. The Mutual Reserve Fund Life Association, Defendant. Statement of Bennett W. T. Amsden Filed Dec. 19th, 1896. A. L. Richardson, Clerk.

In the United States Circuit Court for the District of Idaho.

J. K. DUBOIS, As Administrator of
the Estate of EDWARD JAY CUR-
TIS, deceased.

Plaintiff,

vs.

MUTUAL RESERVE FUND LIFE
ASSOCIATION,

Defendant.

Judgment.

This cause came on regularly for trial at the December, 1896, term, A. A. Fraser and Geo. H. Stewart, Esqrs., appearing as counsel for plaintiff, and Messrs. Hawley and Puckett for defendant; the cause was tried before the Court, sitting without a jury, upon an agreed statement of facts, and the evidence being closed and after argument by counsel the cause was submitted to the Court for consideration and decision and after due deliberation thereon, the Court delivered its decision in writing which is filed, and orders that judgment be entered in accordance therewith in favor of plaintiff and against defendant, as demanded in the prayer of the complaint in said cause.

It is therefore by virtue of the law and by reason of the premises aforesaid, ordered and adjudged that the said plaintiff, J. K. Dubois, as administrator of the estate of Edward Jay Curtis, deceased, do have and recover of and from the said defendant, the Mutual Reserve Fund

Life Association, the sum of six thousand dollars with interest thereon at 10 per cent per annum from Feb. 10, 1896, amounting in all to the sum of six thousand five hundred and thirty dollars (\$6530.00) together with his costs herein to be taxed and that execution issue therefor. Costs taxed at \$40.70. Judgment entered, Dec. 28th, 1896.

JAS. H. BEATTY,
Judge.

In the United States Circuit Court for the District of Idaho.

J. K. DUBOIS, Administrator,

Plaintiff,

vs .

MUTUAL RESERVE FUND ASSO-
CIATION,

Defendant.

A. A. Fraser and Geo. H. Stewart, Attys. for Plff., and
Hawley & Puckett, Attys. for Deft.

Opinion.

The facts in this case upon which its decision depends are: That July 17th, 1889, the defendant issued its policy of life insurance to Edward J. Curtis, who died December 29th, 1895, and of whose estate plaintiff is administrator; that by the policy it is provided that mortuary premiums should be paid by the assured "within thirty days from the first week day of the months of February, April, June of each and every year," and by the tenth

provision attached to, and by the policy made a part thereof, that "This contract shall be governed by, subject to and construed only, according to the laws of the State of New York"; that by a law of said State, enacted May 23rd, 1877, and still in force, it is provided that: "No life insurance company doing business in the State of New York shall have power to declare forfeited or lapsed any policy hereafter issued or renewed by reason of nonpayment of any annual premiums or interest, or any portion thereof, except as hereinafter provided. Whenever any premiums or interest due upon any policy shall remain unpaid when due, a written or printed notice stating the amount of such premiums or interest due on such policy, the place where said premium or interest shall be paid, and the person to whom the same is payable shall be duly addressed and mailed to the person whose life is assured or the assignee of policy, if notice of the assignment has been given to the company at his or her last known post-office address, postage paid by the company, or by an agent of such company or person appointed by it to collect such premiums. Such notice shall further state that unless the said premium or interest then due shall be paid to the company or a duly appointed agent or other person authorized to collect such premiums within thirty days after the mailing of such notice, the said policy and all payments thereon will become forfeited and void. In case the payment demanded by such notice shall be made within thirty days limited therefor, the same shall be taken to be in full compliance with the requirements of the policy in respect to the pay

ment of said premiums or interest, anything therein contained to the contrary notwithstanding; but no such policy shall in any case be forfeited or declared forfeited or lapsed until the expiration of thirty days after the mailing of such notice; provided, however, that a notice stating when the premiums will fall due, and if not paid the policy and all payments thereon will become forfeited and void, served in the manner hereinbefore provided, at least thirty and not more than sixty days prior to the day when the premium is payable, shall have the same effect at the service of the notice hereinbefore provided for." That defendant issued to the assured its notice or mortuary call No. 68, dated New York, June 1st, 1893, and claims to have mailed it the same day, by which it notified the assured, "that an assessment or mortuary call is hereby made upon you" for the sum of \$33.96, "to be paid within thirty days from the date of this notice—That above payment must be made on or before July 1st, 1893,—The above mortuary call is now due, and should be paid at once. If not paid on or before July 1st, 1893, the policy will expire and become null and void."

It may be added that the assured duly performed all the conditions of said policy prior to the payment of the premium last referred to which he failed to pay, nor did he pay anything on said policy thereafter, and that the notice served by defendant concerning said call No. 68, was in due form and duly served unless not in time, and that it served no other notice concerning this or any other premiums or dues, except one on July 18th, 1893, to ask the assured whether he had paid such premiums and

some other dues, and to notify him that his policy had lapsed because of his failure to pay said premium.

No doubt has been suggested that this policy must be construed by the New York statutes. The defendant so provided by its policy; the assured acquiesced, and plaintiff now invokes such construction. It is held that "The adjudications of the highest court of the State (New York) treat it (the statutes above) as one which must be strictly interpreted in favor of the assured, and hold that the defense of a forfeiture through nonpayment of premium is not availing to an insurance company, if there has been any departures on its part from the provisions of the statute in regard to notice": *Hicks v. National Life Ins. Co.*, 60 Fed. 692, and cases therein cited.

It will be observed that, by the foregoing statute, there are two provisions by which notice for the payment of premiums may be given: By the first the company, after the premium became due mails its notice to the assured requiring payment "within thirty days after the mailing of such notice," and by the second, to give its notice in similar manner "at least thirty, and not more than sixty days prior to the day when the premium is payable."

The defendant's said notice says in one place that this premium is due now—June 1st, but the policy says it should be payable within thirty days from the first week day of June—Thursday, June 1st; the 7th paragraph of defendant's answer alleges it became due and payable on the first day of July, and the same appears by the 9th paragraph of the stipulated facts. Moreover a debt is

not due until such time as its payment can be demanded or enforced.

It is beyond question that the assured was under no obligation to pay this premium until thirty days after June 1st, which could not be before July 1st.

It is evident that the premium became due on July 1st; that the defendant so regarded it and that it attempted to give its notice in pursuance of the second provision of the statute which requires that it should be given at least thirty days prior to the day when payable and to state when it would become due. Now, admitting that the notice was in due form, although somewhat contradictory in its statements as to the time when the premiums became due, and that it was duly served on June 1st, was such service at least thirty days prior to July 1st, is the important question for decision. The rule by which time is computed in such cases has been termed the "controversia controversissima." While great diversity of views existed in the early rulings, it is said that by the current of modern authorities the rule, "when time is to be computed from a particular day or a particular event, as when an act is to be performed within a specified period from or after a day named, it is to exclude the day thus designated and to include the last day of the specified period": *Sheets v. Seldins, Lessees*, 2 Wall. 190; but while modern authorities may have agreed upon this rule, they do not seem to have agreed upon the same interpretation of it.

In the last cited case the contract provided that if rent "remained unpaid for one month from the time it shall

become due," which was May 1st, the lease should become forfeited. Demand for payment was made on June 1st.' The question presented was that a lunar and not a calendar month was meant, and that the demand came too late and the court in holding that it was a calendar month, stated in general terms the rule above quoted.

By a California statute it is provided that in certain election contests a notice should be served "at least three days before such trials"—it was held that notice served on the 7th—trial on the 10th—was in time: *Misch v. Mayhero*, 51 Cal. 514, also, to same effect is *Bates v. Howard*, 105 Cal. 182. So in case of a statute requiring the "giving not less than ten days previous notice thereof," by publication, it was held that a notice published on May 16th of an election on the 26th, was sufficient: *Brady v. Moulton*, 63 N. W. (Minn.) 489. Numerous other similar authorities might be quoted, all of which it may be, are more or less controlled by statute similar to that in California, which provides that "The time in which any act provided by law is to be done, is computed by excluding the first day and including the last," which is likewise the law in this State. But to the contrary is the 60 Fed. 692, ante, in which the facts are like those here, and with the construction of the same statute involved. The Court says: "The notice in the present case, having been given before the time when the premium was payable by the contract, should have been served at least 30 days prior to the 2nd day of December. If, according to the meaning of the statute, the mailing of that notice upon the 2nd day of November was not a notice of at least thirty

days, the notice was insufficient. It has always been the rule in New York in applying statutes in which a computation of time is to be made from the day on which an act is to be done, to exclude the day. Thus in *Small v. Edrich*, 5 Wend. 137, the statute was that notice should be served "at least fourteen days before the first day of court," and the notice was served on the 9th day of November, the 23rd day of the same month being the first day of the court; and it was held that this was notice of only thirteen days, and after quoting 2 Wall. 190, ante, as supporting its view it further says: "Excluding, as must be done according to the authorities, the day of mailing in the computation in the present case, the notice was served by the defendant 29 days, and not "at least thirty," prior to the time when it should have been in order to effectuate the forfeitures. The defendant is in no better position than it would be, if no notice had been mailed." This is by the 2nd C. C. of Appeals, an authority so high that this court feels justified in following it, notwithstanding other apparently contrary rulings.

In conclusion it may be added that no fixed rule will govern all cases, but in each attention must be given to the particular language to be construed. In this case the assured was entitled to at least 30 days notice prior to the day of payment. The notice was served at 5 P. M. June 1st, to 5 P. M. July 1st, would be 30 days, but there can be no hesitation in holding that no part of June 1st can be included as a part of the 30 days notice—they can-

not commence until after 12 P. M. June 1st and could not end until after 12 P. M. July 1st or until the beginning of July 2nd. It is therefore held that the notice was not served in time; that failure to pay the premium did not operate the forfeiture of the policy and judgment for plaintiff is ordered.

December 28th, 1896.

BEATTY,

Judge.

[Endorsed]: No. 127. J. K. Dubois, Administrator, etc., vs. Mutual Reserve Fund Life Association. Opinion. Filed December 28th, 1896 A. L. Richardson, Clerk.

In the Circuit Court of the United States, Ninth Judicial District, in and for the Central Division of the District of Idaho.

J. K. DUBOIS, As Administrator of
the Estate of EDWARD JAY CUR-
TIS, deceased.

Plaintiff,

vs.

MUTUAL RESERVE FUND LIFE
ASSOCIATION OF NEW YORK,
a Corporation,

Defendant.

Defendant's Bill of Exceptions.

Be it remembered that this cause came duly on to be heard, before the court, without a jury, a jury being waived expressly by both parties, on the day of December, 1896, A. A. Frazer, Esq., appearing as attorney for the plaintiff, and Hawley & Puckett appearing as attorneys for defendant; and thereupon an Agreed Statement of the Facts in the case, was made in writing and submitted to the Court, as the evidence in the cause; said agreed statement being as follows, to-wit:

[Here follows a copy of said Agreed Statement, and same already appearing in this Transcript (pp. 45 to 49),

and herein fully stated and set forth, is for that reason not again herein inserted.]

Statement of Bennett T. Amsden.

[Here follows a copy of said statement of Bennett W. T. Amsden, together with the Exhibits thereto attached, and therein mentioned and stated, and the same already appearing in this Transcript (pp. 50 to 54), and herein fully stated and set forth, is for that reason not again here inserted.]

Exhibit A.

[Here follows a copy of the Policy of Insurance in this case offered and admitted in evidence on the trial thereof, as one of the defendant's exhibits therein, and a copy thereof being attached to and made a part of the complaint herein, and already appearing in this Transcript (pp. 55 to 56), is for that reason not again inserted..

Argument of counsel was had, and whereupon the Court having fully considered the evidence herein, makes and files his decision as follows, to-wit:

Decision.

[Here follows a copy of the said decision, and the same already appearing in this Transcript (pp. 65 to 73), and herein fully set forth and stated, is for that reason not again here inserted.]

Whereupon the defendant by its counsel, duly excepted to the decision upon the grounds that it was against law and against the weight of the testimony in the cause, and not warranted by the testimony of the cause.

And the defendant now asks that this, its bill of exceptions be signed settled and allowed as a part of the record herein.

HAWLEY & PUCKETT,
Attorneys for Defendant.

In the Circuit Court of the United States, Ninth Judicial Circuit, in and for the Central Division of the District of Idaho.

J. K. DUBOIS, as Administrator of
the Estate of EDWARD JAY CUR-
TIS, deceased.

Plaintiff,

vs.

MUTUAL RESERVE FUND LIFE
ASSOCIATION, a Corporation,
Defendant.

Stipulation.

It is hereby stipulated and agreed by and between the counsel for the respective parties hereto, that the exhibits attached to the affidavit of Bennett W. T. Amsden and marked A, B, C, D, and E, on file in this cause may

be considered, and are hereby made a part of this bill of exceptions with the privilege of supplying and attaching certified copies thereof to said bill of exceptions at any time if deemed necessary or proper.

ALFRED A. FRASER,

Attorney for Plaintiff.

HAWLEY & PUCKETT,

Attorneys for Defendant.

The above and foregoing bill of exceptions is hereby settled and allowed this 13th day of April, 1897.

JAS. H. BEATTY,

Judge.

[Endorsed]: In the Circuit Court of the United States, Ninth Judicial Circuit, in and for the Central Division of the District of Idaho. J. K. Dubois as Administrator of the Estate of Edward Jay Curtis, Deceased, Plff. vs. The Mutual Reserve Fund Life Association, a Corporation, Deft. Stipulation. Filed Jan. 7th, 1897. A. L. Richardson, Clerk.

In the Circuit Court of the United States, Ninth Judicial Circuit, in and for the Central Division of the State of Idaho.

J. K. DUBOIS, as Administrator of
the Estate of Edward Jay Curtis,
Deceased,

Plaintiff.

vs.

MUTUAL RESERVE FUND LIFE
ASSOCIATION,

Defendant.

Petition for Writ of Error.

The petition of the Mutual Reserve Fund Life Association, a corporation, and defendant in the above entitled action, respectfully shows:

That feeling itself aggrieved by the decision and judgment made entered thereon in said action on the 28th day of December, A. D. 1896, whereby it was ordered and adjudged that the plaintiff do have and recover of and from the defendant the sum of six thousand five hundred and seventy dollars and seventy cents, comes now through and by its attorneys, Messrs. Hawley and Puckett, and its counsel, I. B. L. Brandt, Esqr., and re-

spectfully petitions and prays this Court for the allowance of a writ of error from said decision and judgment to the United States Circuit Court of Appeals in and for the Ninth Judicial Circuit, under and according to the laws of the United States in that behalf made and provided; and also, that an order be made fixing the amount of security and bond which defendant should give and furnish upon said writ of error, and directing that upon the giving of said security and bond all further proceedings in this Court be suspended and stayed until the determination of said writ of error by said United States Circuit Court of Appeals in and for the Ninth Judicial Circuit, and prays, that a transcript and record of the proceedings in the cause, duly authenticated, may be transmitted to said United States Circuit Court of Appeals in and for the Ninth Judicial Circuit.

Your petitioner and plaintiff in error herewith presents and files with the clerk of this Honorable Court its Assignment of Errors.

And your petitioner and plaintiff in error will ever pray.

HAWLEY & PUCKETT,
Attorneys for Petitioner and Plaintiff in Error.

I. B. L. BRANDT,
Of Counsel.

Upon reading and filing the foregoing petition, and assignment of errors, it is hereby ordered that the prayer of said petitioner and plaintiff in error be allowed, and that a writ of error to the United States Circuit Court of Appeals in and for the Ninth Judicial Circuit, be allowed and issued herein as prayed for.

Dated, June 21st, 1897.

JAS. H. BEATTY,
Judge.

[Endorsed]: No. 127. In the Circuit Court of the United States, Ninth Judicial Circuit, in and for the Central Division of the State of Idaho. J. K. Dubois, as Administrator, etc., Plaintiff, vs. Mutual Reserve Fund Life Association, Defendant. Petition for Writ of Error and Order of Court allowing the same. Filed June 21st, 1897. A. L. Richardson, Clerk.

Hawley and Puckett, Attorneys for Defendant and Plaintiff in Error. I. B. L. Brandt, of Counsel.

*In the United States Circuit Court of Appeals, in and for the
Ninth Judicial Circuit.*

J. K. DUBOIS, as Administrator of
the Estate of Edward Jay Curtis, De-
ceased.

Defendant in Error.

vs.

MUTUAL RESERVE FUND LIFE
ASSOCIATION,

Plaintiff in Error.

Assignment of Errors.

Now comes the Mutual Reserve Fund Life Association, the defendant and plaintiff in error herein, by Messrs. Hawley and Puckett, its attorneys, and I. B. L. Brandt, its counsel, and upon the records and proceedings in this case, particularly specifies the following as the errors upon which it will rely and will urge upon its writ of error in the above entitled cause, to-wit:

I.

That the said Circuit Court of the United States, for the Central Division of the State of Idaho, erred in deciding that the laws of the State of New York of 1876, as

amended in 1877, and under which it held that the notice given the deceased of the levying of the assessment or mortuary call No. 68, was not given in time, applied to the defendant corporation.

II.

That the said Court erred in deciding, that the said laws of the State of New York, of 1876, as amended in 1877, applied to insurance companies which like the corporation defendant do business and operate upon the assessment plan.

III.

The said Court erred in deciding, that the defendant corporation was required to give the deceased, or any of its members thirty days notice of the falling due of an assessment or mortuary call.

IV.

The said Court erred, in not applying the laws of the State of New York, chapter 175, laws of 1883, to the defendant corporation, and in not holding that the said defendant corporation was subject only to the provisions of the said laws.

V.

The said Court erred in not applying the decision of the New York Court of Appeals, in the case of Ronald v.

Mutual Reserve Fund Life Association, 132 N. Y. 378, to the defendant corporation, and in not holding that the defendant corporation was subject only to the provisions of the laws of the State of New York, chapter 175, laws of 1883.

VI.

The said Court erred, in deciding that the notice of the assessment, or mortuary call No. 68, dated and mailed by the defendant corporation on June 1st, 1893, and calling for the payment by the said deceased of the said assessment or mortuary call on or before July 1st, 1893, was not given or served as required by the said laws of the State of New York, of 1876, as amended in 1877, if the said laws did apply to the defendant corporation.

VII.

That the said Court erred, in not construing the policy of insurance in this case, according to the laws of the State of New York applicable thereto.

VIII.

The said Court erred, in deciding that the said notice of assessment or mortuary call No. 68, dated and mailed to the said deceased, by the defendant corporation on June 1st, 1893, was not duly given or served.

IX.

That the said Court erred, in deciding that the assessment or mortuary call No. 68, dated and mailed by the corporation defendant on June 1st, 1893, was due July 1st, 1893.

X.

The said Court erred in deciding, that the failure by the said deceased to pay the assessment or mortuary call No. 68, did not operate as a forfeiture of the policy of insurance in this case, and that notwithstanding such failure and default, that said policy of insurance remained in full force and effect.

XI.

The said Court erred, in ordering judgment for the plaintiff.

XII.

The said Court erred, in not ordering judgment for the defendant. And the plaintiff in error, Mutual Reserve Fund Life Association, prays that said judgment be reversed, annulled and altogether held for naught, and that it may be restored to all things which it has lost by occasion of such judgment, and that a new trial be granted.

HAWLEY & PUCKETT,

Attorneys for Plaintiff in Error.

I. B. L. BRANDT,

Of Counsel for Plaintiff in Error.

[Endorsed]: No. 127. In the United States Circuit Court of Appeals, in and for the Ninth Judicial Circuit. J. K. Dubois, as Administrator, etc., Defendant in Error, vs. Mutual Reserve Fund Life Association, Plaintiff in Error. Assignment of Errors. Filed June 21st, 1897. A. L. Richardson, Clerk.

Hawley and Puckett, attorneys for plaintiff in error; I. B. L. Brandt, of counsel.

In the Circuit Court of the United States, Ninth Judicial Circuit, in and for the Central Division of the State of Idaho.

J. K. DUBOIS, as Administrator of
the Estate of Edward Jay Curtis,
Deceased,

Plaintiff,

vs.

MUTUAL RESERVE FUND LIFE
ASSOCIATION,

Defendant.

Order Fixing Amount of Bond, etc.

The defendant, the Mutual Reserve Fund Life Association, having this day filed its petition for a writ of error from the decision and judgment thereon made and entered herein, to the United States Circuit Court of Appeals in and for the Ninth Judicial Circuit, together with an as-

signment of errors within due time, and also praying that an order be made fixing the amount of security which defendant should give and furnish upon said writ of error, and that upon the giving of said security, all further proceedings of this Court be suspended and stayed until the determination of said writ of error by said United States Circuit Court of Appeals in and for the Ninth Judicial Circuit, and said petition having this day been duly allowed:

Now, therefore, it is ordered, that upon the said defendant, the Mutual Reserve Fund Life Association, filing with the Clerk of this Court a good and sufficient bond in the sum of six thousand five hundred seventy and 70-100 dollars, (\$6,570.70), to the effect, that if the said defendant the Mutual Reserve Fund Life Association, and plaintiff in error shall prosecute the said writ of error to effect, and answer all damages and costs if it fails to make its plea good, then the said obligation to be void; else to remain in full force and virtue, the said bond to be approved by the Court, that all further proceedings in this Court be, and they are hereby suspended and stayed until the determination of said writ of error by the said United States Circuit Court of Appeals.

Dated, June 21st, 1897.

JAS. H. BEATTY,
Judge.

[Endorsed]: No. 127. In the Circuit Court of the United States, Ninth Judicial Circuit, in and for the Central

Division of the State of Idaho. J. K. Dubois, as Administrator, etc., Plaintiff, vs. Mutual Reserve Fund Life Association, Defendant. Order of Court fixing amount of Bond, and suspending and staying proceedings. Filed June 21st, 1897. A. L. Richardson, Clerk.

Hawley and Puckett, attorneys for defendant. I. B. L. Brandt, of counsel.

Bond on Appeal (See Designation).

[A Supersedeas Bond in the sum of \$6,570.70, as required and ordered to be given and furnished by the defendant upon said writ or error, was on the 21st day of June, 1897, duly and regularly given, furnished, and filed with the clerk of the court, pursuant to and in compliance with the said order; that by written stipulation and agreement indorsed thereon, the attorney for plaintiff and defendant in error, accepted the said bond, and waived all objection thereto, as to its form and sufficiency; that thereupon, the said bond was duly approved by the Judge of the Court as to form and also as to sufficiency of surety.]

UNITED STATES OF AMERICA—ss.

Citation.

The President of the United States, to J. K. Du Bois, as Administrator of the Estate of Edward Jay Curtis, Deceased, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, on the 20th day of July, 1897, pursuant to a writ of error duly issued and now on file in the clerk's office of the Circuit Court of the United States, for the Ninth Circuit, Central Division of the State of Idaho, wherein the Mutual Reserve Fund Life Association, a corporation, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable JAMES H. BEATTY, Judge of the United States Circuit Court for the Ninth Circuit, Central Division of the State of Idaho, this 21st day of June, A. D. 1897.

JAS. H. BEATTY,
Judge.

[Endorsed]:

Service of the within Citation and receipt of a copy thereof is hereby admitted this 21st day of June, 1897.

ALFRED A. FRASER,

Attorneys for Defendant in Error.

[Endorsed]: Filed June 21, 1897. A. L. Richardson,
Clerk.

UNITED STATES OF AMERICA—ss.

Writ of Error.

The President of the United States, to the Honorable, the Judges of the Circuit Court of the United States for the Ninth Circuit, Central Division of the State of Idaho, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court, before you, or some of you, between Mutual Reserve Fund Life Association, a corporation, defendant, and plaintiff in error, and J. K. DuBois, as administrator of the estate of Edward Jay Curtis, deceased, plaintiff, and defendant in error, a manifest error hath happened, to the great damage of the said Mutual Reserve Fund Life Association, a corporation, plaintiff in error, as by its complaint appears.

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the

parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the city of San Francisco, in the State of California, on the 20th day of July next, in the said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the United States, the 21st day of June, in the year of our Lord one thousand eight hundred and ninety-seven.

[Seal]

A. L. RICHARDSON,

Clerk of the Circuit Court of the United States, for the Ninth Circuit, Central Division of the State of Idaho.

Allowed by

JAS. H. BEATTY.

Judge.

Service of the within writ and receipt of copy thereof is hereby admitted this 21st day of June, 1897.

[Seal]

ALFRED A. FRASER,

Attorney for Plaintiff and Defendant in Error.

The answer of the Judges of the Circuit Court of the United States of the Ninth Judicial Circuit, in and for the District of Idaho.

The record and all proceedings of the plaint whereof mention is within made, with all things touching the same, we certify under the seal of our said Court, to the United States Circuit Court of Appeals for the Ninth Circuit, within mentioned at the day and place within contained, in a certain schedule to this writ annexed as within we are commanded.

By the Court.

[Seal]

A. L. RICHARDSON,

Clerk.

[Endorsed]: No. 127. Circuit Court of the United States, Ninth Circuit, Central Division of the State of Idaho. Mutual Reserve Fund Life Ass'n, a corporation, Plaintiff in Error, vs. J. K. DuBois, as Administrator, etc., Defendant in Error. Writ of Error. Filed June 21, 1897. A. L. Richardson, Clerk.

In the Circuit Court of the United States for the Ninth Judicial Circuit, and District of Idaho.

J. K. DUBOIS, as Administrator of
the Estate of Edward Jay Curtis, deceased,

vs.

MUTUAL RESERVE FUND LIFE
ASSOCIATION,

Clerk's Certificate to Transcript.

I, A. L. Richardson, Clerk of the Circuit Court of the United States, in and for the District of Idaho, do hereby certify the foregoing transcript of pages numbered from 1 to 121, inclusive to be a full, true and correct copy of the pleadings and proceedings in the above entitled cause and that the same together constitute the return to the annexed writ of error.

I further certify that the cost of said record amounts to \$116 50-100 which has been paid by the said Plaintiff in Error.

Witness my hand and the seal of said Circuit Court affixed at Boise City, Idaho, this 12th day of July, 1897.

A. L. RICHARDSON,

Clerk.

[Endorsed]: No. 392. United States Circuit Court of Appeals, for the Ninth Circuit. Mutual Reserve Fund Life Association, a Corporation, Plaintiff in Error, v. J. K. Du Bois, as Administrator of the Estate of Edward J. Curtis, deceased, Defendant in Error. Transcript of Record. Writ of Error to the Circuit Court of the United States, for the District of Idaho, Central Division.

Filed Aug. 3, 1897.

F. D. MONCKTON,

Clerk.

